

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DIEGO H. LA MADRID,  
CDCR #P-98764,

Plaintiff,

vs.

CALIFORNIA DEP'T OF  
CORRECTIONS; et al.,

Defendant.

Civil No. 07-2434 JM (NLS)

**ORDER:**

**(1) DISMISSING CIVIL ACTION  
AS DUPLICATIVE PURSUANT  
TO 28 U.S.C. § 1915A(b)(1); and**

**(2) DENYING MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
AND MOTION TO APPOINT  
COUNSEL AS MOOT  
[Doc. Nos. 2, 3]**

Plaintiff, a state inmate currently incarcerated at the California Institution for Men located in Chino, California and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. §1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No 2].

**I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

The Prison Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915A, obligates the Court to review complaints filed by anyone "incarcerated or detained in any facility who is accused of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions of parole, probation,

1 pretrial release, or diversionary program,” “as soon as practicable after docketing” and regardless of  
2 whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The  
3 Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous,  
4 malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick v.*  
5 *Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

6 Plaintiff’s instant Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C.  
7 § 1915A(b)(1) because it appears to be duplicative of a case Plaintiff is already litigating. Plaintiff’s  
8 Complaint contains identical claims that are found in *La Madrid v. Hernandez*, S.D. Cal. Civil Case No.  
9 07-1997 JM (JMA). A court “may take notice of proceedings in other courts, both within and without  
10 the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States*  
11 *ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

12 A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely  
13 repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir.  
14 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Because  
15 Plaintiff has already litigated the same claims presented in the instant action in *La Madrid v. Hernandez*,  
16 S.D. Cal. Civil Case No. 07-1997 JM (JMA), the Court hereby **DISMISSES** Civil Case No. 07-2434  
17 JM (NLS) pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Resnick*, 213 F.3d at  
18 446 n.1.

## 19 **II. Conclusion and Order**


20 Good cause appearing, **IT IS HEREBY ORDERED** that:

21 Plaintiff’s Complaint in Civil Case No.07-2434 JM (NLS) is **DISMISSED** as frivolous pursuant  
22 to 28 U.S.C. § 1915A(b)(1). Plaintiff’s Motion to Proceed IFP [Doc. No. 2] and Motion to Appoint  
23 Counsel are **DENIED** as moot.

24 The Clerk shall close the file.

25 **IT IS SO ORDERED.**

26 DATED: February 25, 2008

27   
28 Hon. Jeffrey T. Miller  
United States District Judge